

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **September 14, 2004**

AGENDA ITEM NO.: 25

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Interest on Delinquent Business Licenses**

RECOMMENDATION: Amend and Reenact Section 36-126.9 of the Code of the City of Lynchburg to allow interest to be calculated monthly on delinquent Business Licenses which is consistent with the interest calculation on delinquent Personal Property and Real Estate taxes.

SUMMARY: The accounts receivable module is designed to systematically calculate interest monthly on past due accounts. Historically, interest on delinquent Business Licenses has been calculated on a daily basis. This daily calculation requires staff to make a manual calculation each time a delinquent Business License is paid. With this amendment, interest on delinquent Business Licenses will be calculated on a monthly basis similar to delinquent Personal Property and Real Estate taxes. Additionally, the change will be consistent with the design of the Miscellaneous Accounts Receivable Module and eliminate the manual calculation.

Further, the City assesses the maximum interest rate allowed by the Code of Virginia, ten percent (10%), the first of the month following the due date. In addition, a ten percent (10%) late payment penalty, the maximum allowed by the Code of Virginia, is assessed the day following the due date.

PRIOR ACTION(S): Finance Committee, September 7, 2004

FISCAL IMPACT: Increase in Interest Revenue

CONTACT(S): Donna S. Witt, Assistant Director for Financial Services, 455-3968

ATTACHMENT(S): Ordinance to amend and reenact Section 36-126.9 of the Code of the City of Lynchburg. Summary of First Virginia Cities and surrounding counties penalty and interest rates and calculation methodology for business licenses

REVIEWED BY: lkp

AN ORDINANCE TO AMEND AND REENACT SECTION 36-126.9 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE INTEREST TO BE CHARGED BY THE CITY WHEN PAYMENT FOR BUSINESS LICENSES ARE DELINQUENT.

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 36-126.9 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 36-126.9. Penalties and interest.

(a) Penalties.

(1) A penalty of ten percent (10%) of the tax shall be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due dates. A late filing penalty shall be imposed by the commissioner of the revenue if the application is late. If a late filing penalty is imposed, billings and collections shall impose a late payment penalty of ten percent (10%) if the tax is not paid within thirty (30) days. If a late filing penalty is not imposed, billings and collections shall impose a ten percent (10%) late payment penalty if the tax is not paid by the appropriate due dates. However, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the commissioner of the revenue, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late filing penalty assessed with the additional tax. If any additional assessment of tax by the commissioner of the revenue is not paid within thirty (30) days, the billings and collections division shall impose a ten percent (10%) late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

(2) Acted responsibly means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, by requesting the appropriate extension.

(3) Events beyond the taxpayer's control include, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with sole responsibility with tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the commissioner of the revenue who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(4) Unless otherwise specifically provided by law, a violation of any provision of this chapter shall constitute a class 2 misdemeanor. The conviction of any person or entity for a violation of any provision of this article and the imposition of a penalty therefore shall not relieve such person from liability for any tax imposed upon him by this article.

(b) Interest.

(1) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the commissioner of the revenue is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this article from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged in paragraph (2) below. However, if such erroneous payments were in any way due to the fault or negligence of the taxpayer, no interest shall be paid on the refund of the erroneously paid taxes.

(2) Interest at the rate of ten percent (10%) per annum from the first day of the month following the month in which taxes are required to be paid, shall be collected upon the principal and applicable penalty remaining unpaid. ~~shall be charged, on principal and applicable penalty, from the due date until the date paid.~~

(3) No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than thirty (30) days from the date of the payment that created the refund or the due date of the tax, whichever is later.

2. That this ordinance shall be effective on its adoption.

Adopted:

Certified:

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Clerk of Council

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